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ABSTRACT

The purpose of this brochure, which was produced as a service to the academic community, is to provide a brief outline of what can and cannot be done legally with software, and to clarify the implications and restrictions of the U.S. Copyright Law. Relevant facts concerning copying software precede the EDUCOM statement of principle on intellectual property and the legal and ethical use of software. The different restrictions and limitations of copyright are then described for each of the four categories of software: commercial--the majority of software purchased from publishers and commercial computer stores; shareware--provides a license to use the software (restrictions vary from program to program); freeware--conditions, defined by the holder of the copyright, are in direct opposition to normal copyright restrictions; and public domain--original copyright holder relinquishes all rights to the software. Common questions are answered and site-licensing and bulk-purchase software are suggested as legal alternatives to purchasing software. (ALF)

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TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

Software enables us to accomplish many different tasks with computers. Unfortunately, in order to get our work done quickly and conveniently, some people make and use unauthorized software copies. The purpose of this brochure is to provide a brief outline of what you legally can and cannot do with software. Hopefully it will help you better understand the implications and restrictions of the U.S. Copyright Law.

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Here Are Some Relevant Facts:

UNAUTHORIZED copying of software is illegal. Copyright law protects software authors and publishers, just as patent law protects inventors.

UNAUTHORIZED copying of software by individuals can harm the entire academic community. If unauthorized copying proliferates on a campus, the institution may incur legal liability. Also, the institution may find it more difficult to negotiate agreements that would make software more widely and less expensively available to members of the academic community.

UNAUTHORIZED copying and use of software deprives publishers and developers of a fair return for their work, increases prices, reduces the level of future support and enhancements, and can inhibit the development of new software products.

RESPECT for the intellectual work of others has traditionally been essential to the mission of colleges and universities. As members of the academic community, we value the free exchange of ideas. Just as we do not tolerate plagiarism, we do not condone the unauthorized copying of software, including programs, applications, data bases and code.

THEREFORE, we offer the following statement of principle about intellectual property and the legal and ethical use of software.

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The EDUCOM Code

Software and Intellectual Rights

Respect for intellectual labor and creativity is vital to academic discourse and enterprise. This principle applies to works of all authors and publishers in all media. It encompasses respect for the right to acknowledgement, right to privacy, and right to determine the form, manner, and terms of publication and distribution.

Because electronic information is volatile and easily reproduced, respect for the work and personal expression of others is especially critical in computer environments. Violations of authorial integrity, including plagiarism, invasion of privacy, unauthorized access, and trade secret and copyright violations, may be grounds for sanctions against members of the academic community.

EDUCOM's Educational Uses of Information Technology (EUIT) Program encourages the broadest possible adoption of this statement of principle. The EDUCOM Code is intended for adaptation and use by individuals, and educational institutions at all levels.

Classification of Software

In terms of copyright, there are four broad classifications of software:

- Commercial
- Shareware
- Freeware
- Public Domain

The restrictions and limitations regarding each classification are different.

COMMERCIAL

COMMERCIAL software represents the majority of software purchased from software publishers, commercial computer stores, etc. When you buy software, you are actually acquiring a license to use it, not own it. You acquire the license from the company that owns the copyright. The conditions and restrictions of the license agreement vary from program to program and should be read carefully. In general, commercial software licenses stipulate that (1) the software is covered by copyright, (2) although one archival copy of the software can be made, the backup copy cannot be used except when the original package fails or is destroyed, (3) modifications to the software are not allowed, (4) decompiling (i.e. reverse engineering) of the program code is not allowed without the permission of the copyright holder, and (5) development of new works built upon the package (derivative works) is not allowed without the permission of the copyright holder.

Classification of Software (continued)

SHAREWARE

SHAREWARE software is covered by copyright, as well. When you acquire software under a shareware arrangement, you are actually acquiring a license to use it, not own it. You acquire the license from the individual or company that owns the copyright. The conditions and restrictions of the license agreement vary from program to program and should be read carefully. The copyright holders for SHAREWARE allow purchasers to make and distribute copies of the software, but demand that if, after testing the software, you adopt it for use, you must pay for it. In general, shareware software licenses stipulate that (1) the software is covered by copyright, (2) although one archival copy of the software can be made, the backup copy cannot be used except when the original package fails or is destroyed, (3) modifications to the software are not allowed, (4) decompiling (i.e. reverse engineering) of the program code is not allowed without the permission of the copyright holder, and (5) development of new works built upon the package (derivative works) is not allowed without the permission of the copyright holder. Selling software as SHAREWARE is a marketing decision, it does not change the legal requirements with respect to copyright. That means that you can make a single archival copy, but you are obliged to pay for all copies adopted for use.

FREEWARE

FREEWARE also is covered by copyright and subject to the conditions defined by the holder of the copyright. The conditions for FREEWARE are in direct opposition to normal copyright restrictions. In general, FREEWARE software licenses stipulate that (1) the software is covered by copyright, (2) copies of the software can be made for both archival and distribution purposes but that

distribution cannot be for profit, (3) modifications to the software is allowed and encouraged, (4) decompiling (i.e. reverse engineering) of the program code is allowed without the explicit permission of the copyright holder, and (5) development of new works built upon the package (derivative works) is allowed and encouraged with the condition that derivative works must also be designated as FREEWARE. That means that you cannot take FREEWARE, modify or extend it, and then sell it as COMMERCIAL or SHAREWARE software.

PUBLIC DOMAIN

PUBLIC DOMAIN software comes into being when the original copyright holder explicitly relinquishes all rights to the software. Since under current copyright law, all intellectual works (including software) are protected as soon as they are committed to a medium, for something to be PUBLIC DOMAIN it must be clearly marked as such. Before March 1, 1989, it was assumed that intellectual works were NOT covered by copyright unless the copyright symbol and declaration appeared on the work. With the U.S. adherence to the Berne Convention this presumption has been reversed. Now all works assume copyright protection unless the PUBLIC DOMAIN notification is stated. This means that for PUBLIC DOMAIN software (1) copyright rights have been relinquished, (2) software copies can be made for both archival and distribution purposes with no restrictions as to distribution, (3) modifications to the software are allowed, (4) decompiling (i.e. reverse engineering) of the program code is allowed, and (5) development of new works built upon the package (derivative works) is allowed without conditions on the distribution or use of the derivative work.

Questions You May Have About Using Software

What do I need to know about software and the U.S. Copyright Act?

It's really very simple. The Copyright Law recognizes that all intellectual works (programs, data, pictures, articles, books, etc.) are automatically covered by copyright unless it is explicitly noted to the contrary. That means that the owner of a copyright holds the exclusive right to reproduce and distribute his or her work. For software this means it is illegal to copy or distribute software, or its documentation, without the permission of the copyright holder.

If you have a legal copy of software you are allowed to make a single archival copy of the software for backup purposes. However, the copy can only be used if the original software is destroyed or fails to work. When the original is given away, the backup copy must also be given with the original or destroyed.

If software is not copy-protected, do I have the right to copy it?

Lack of copy-protection does NOT constitute permission to copy software without authorization of the software copyright owner. "Non-copy-protected" software enables you to make a backup copy. In offering non-copy-protected software to you, the developer or publisher has demonstrated significant trust in your integrity.

May I copy software that is available through facilities on my campus, so that I can use it more conveniently in my own office or room?

Software acquired by colleges and universities is usually covered by licenses. The licenses should clearly state how and where the software may be legally used by members of the relevant campus communities (faculty, staff, and students). Such licenses cover software whether installed on stand-alone or networked systems, whether in private offices and rooms, or in public clusters and

laboratories. Some institutional licenses permit copying for certain purposes. The license may limit copying, as well. Consult your campus authorities to be sure if you are unsure about the permissable use of a particular software product.

May I loan software?

The 1990 modification to the Copyright Law makes it illegal to "loan, lease or rent software" for purposes of direct or indirect commercial advantage without the specific permission of the copyright holder. Non-profit educational institutions are exempted from the 1990 modification, so institutional software may be loaned.

Some licenses may even restrict the use of a copy to a specific machine, even if you own more than one system. In general, licenses usually do NOT allow the software to be installed or resident on more than a single machine, or to run the software simultaneously on two or more machines.

Isn't it legally "fair use" to copy software if the purpose in sharing it is purely educational?

Historically, the Copyright Law was modified to permit certain educational uses of copyrighted materials without the usual copyright restrictions. However, "fair use" of computer software is still a cloudy issue. The "fair use" amendments to the copyright law are intended to allow educational use of legally protected products, but it is limited (for paper-based products) to small portions of full works. For most software it is clearly illegal to make and distribute unauthorized, fully-functional copies to class members for their individual use. Making copies of a small section of code from a program in order to illustrate a programming technique might not be a violation. The best alternative is to clear any such use with the copyright owner or consult the appropriate authorities at your institution.

Alternatives To Explore

Software can be expensive. You may think that you cannot afford to purchase certain programs that you need. Site-licensed and bulk-purchased software are legal alternatives that make multiple copies of software more affordable. Many educational institutions negotiate special prices for software used and purchased by faculty, staff and students. Consult your campus computing office for information. As with other software, site-licensed or bulk-purchased software is still covered by copyright, although the price per copy may be significantly lower than the normal commercial price. A usual condition of site-licensing or bulk-purchasing is that copying and distribution of the software is limited to a central office which must maintain inventories of who received it. When you leave the academic community by graduation, retirement, or resignation you may no longer be covered by the institutional agreement and may be required to return or destroy your copies of the software licensed to the institution.

Many colleges sell software through a campus store at "educational discounts." If you purchase software for yourself through such an outlet, the software is yours and need not be destroyed or surrendered when you leave the institution. It is, however, still covered by normal copyright protection and covered by the specific conditions of the licensing agreement.

Final Note

Restrictions on the use of software are far from uniform. You should check carefully each piece of software and the accompanying documentation yourself. In general, you do not have the right to:

- Receive and use unauthorized copies of software, or
- Make unauthorized copies of software for others.

If you have questions not answered by this brochure about the proper use and distribution of a software product, seek help from your computing office, the software developer or publisher, or other appropriate authorities at your institution.

This brochure has been produced as a service to the academic community by the Educational Uses of Information Technology Program (EUIT) of EDUCOM and the Information Technology Association of America (ITAA). EDUCOM is a non-profit consortium of colleges and universities committed to the use and management of information technology in higher education. ITAA is an industry association providing issues management and advocacy, public affairs, business-to-business networking, education and other member services to companies which create and market products and services associated with computers, communications and data.

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